

Revised: 5-13-02, 10-9-03, 5-31-06, 2-7-12, 9-26-12, 11-16-15, 10-24-18, 6-8-20

DURHAM POLICE DEPARTMENT

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POLICY #: 1.3.4.3

SUBJECT: Use of Force, PepperBall Launcher

NOTE: This written directive is for the internal governance of the Durham Police Department, and as provided by RSA 516:36, is not intended and should not be interpreted to establish a higher standard of care in any civil or criminal action than would otherwise be applicable under existing law.

PURPOSE

The purpose of this policy and procedure is to establish guidelines for the use of PepperBall Launcher to control and disperse large crowds of moving or resisting demonstrators or to prevent self-destructive acts of violence, such as any violent or potentially violent act by a suspect that is attempting or threatening to commit suicide by any means or cause serious bodily injury to themselves by any means.

POLICY

It is the policy of the Durham Police Department to arm its qualified officers with those tools necessary to defend themselves or third person(s) from the use of force; the PepperBall Launcher is no exception. Durham Police Officers shall only use that force which is both reasonable and necessary to accomplish lawful objectives.

GENERAL PROVISIONS

- An officer has a duty to intervene to prevent or stop the use of excessive force by another officer.
- All uses of force shall be documented and investigated pursuant to this agency's policies.
- An officer shall use de-escalation techniques and other alternatives to higher levels of force consistent with his or her training whenever possible and appropriate to reduce the need for force.
- Whenever possible and when such delay will not compromise the safety of the officer or another and will not result in the destruction of evidence, escape of a suspect, or commission of a crime, an officer shall allow an individual time and opportunity to submit to verbal commands before force is used.

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Procedure

Characteristics

- PepperBall projectiles contain (PAVA powder-Pelargonic Acid and Vanillyamide) PAVA is pharmaceutically manufactured. PAVA acts as an inflammatory agent to the mucous membranes of humans and animals.
- When the powder contacts the face, it typically causes swelling of the mucous membranes, involuntary closing of the eyes, gagging, coughing, shortness of breath, and an intense feeling of burning on the exposed areas.
- Most persons encountering PAVA involuntarily bend at the waist or drop to their knees, even if they are intoxicated or in a highly emotional state.
- PAVA is usually effective against combative persons with reduced pain sensitivity and vicious animals.
- The symptoms are temporary lasting up to 45 minutes if untreated. Decontamination is easier and more effective than with other chemical agents.
- In addition, the kinetic impact (10-12 foot pounds) when delivered directly will cause pain, bruising, abrasions and welts, which can cause a suspect to surrender.

Range/Tactics of the PepperBall System

- For maximum effectiveness, a targeted individual should be at a distance of not more than 60 feet. For officer safety reasons, a reactionary gap of 21 feet for use of the PepperBall system is recommended, however, the system can be used as close to a suspect as ZERO feet.
- To be effective, PAVA powder must come in direct contact with the assailant's face, by striking the suspects body **below** the neck and allowing the powder to waft upward. The head, neck, eyes, face, throat and spine are NOT suitable targets unless lethal force would otherwise be authorized.

Authorized Uses

Authorized uses of the PepperBall Launcher shall include, but is not limited to the following:

- Officers may use the PepperBall Launcher to prevent self-destructive acts of violence, such as any violent or potentially violent act by a suspect that is attempting or threatening to commit suicide by any means or cause serious bodily injury to themselves by any means.

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- Officers may use the PepperBall Launcher to prevent an apparently unarmed barricaded suspect from re-acquiring cover or concealment when it is believed that the suspect was previously armed *or may have been armed* and that failure to stop the suspect could result in the suspect re-arming themselves.
- In crowd control situations, officers may use the PepperBall Launcher to prevent specifically identified suspect(s) from throwing objects (such as rocks, bottles or other apparently hard objects) that could cause serious bodily injury to police or third persons.
- In crowd control situations, officers may use the PepperBall Launcher to disperse large crowds of moving or resisting demonstrators, to include violent or potentially violent crowds that have refused general orders to disperse.
- Officers may use the PepperBall Launcher to prevent suspects from *preparing* any explosive device such as “Molotov Cocktails” or other destructive devices. However, the officer shall carefully weigh whether the use of a less lethal weapon will be sufficient to stop the suspect from committing a potentially deadly act.
- The PepperBall Launcher may be used at distances as close as ZERO feet and as far away as 60 feet for a single targeted suspect, and 120-150 feet for area saturation.
- The only consideration when firing the PepperBall Launcher shall be to stop an act as described above on the part of an aggressor or aggressive crowd. However, as this is a Non-lethal attempt to stop an act of aggression or a potential act of aggression, officers using this weapon system should avoid head shots when possible.

Precautions

- PepperBall is only to be used for defensive purposes and in overcoming hostile resistance.
- Use reasonable caution prior to deploying/launching PepperBall powder on subjects who are physically engaged with other officers or not isolated from innocent bystanders.
- Use caution when deploying/launching PepperBall powder under windy conditions so it does not blow back at you or an innocent person.
- Make sure your mode of carry is such as to avoid accidental activation.
- Recognize that the PepperBall system is a non-lethal weapon and may be an inappropriate level of force against an attacker armed with a firearm, knife or other deadly weapon.

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- Officers shall maintain close observation of powdered individuals until it is determined that the effects of PAVA are wearing off.
- If any unusual effects appear other than what are considered PAVA effects; i.e. unconsciousness, unusual swelling of facial area, hives, itching or bleeding shall be medically treated immediately.
- All individuals who have been exposed to PAVA shall be transported in the upright seated position at all times. Subjects will not be hog-tied.
- Officers should be made aware that subjects exposed to PAVA powder who are obese, extremely drug/alcohol intoxicated, hypertensive, excited, aggressive or have exerted more than normal amounts of physical activity or have other known medical problems are at greater risk of positional asphyxia. If there is a known medical problem, an ambulance shall be called to render medical aid to the affected person(s).
- An ambulance shall be called in any instance an exposed person(s) request it or the officer feel it is warranted.

Decontamination

- Undertake decontamination as soon as practicable once an attacker has been taken into custody after they have been contaminated.
 - ❖ If the PepperBall Launcher is used to disperse a crowd, no effort shall be made to decontaminate. However, if any person is taken into custody AND is affected by the powder, decontamination shall begin as soon as is practical.
- Instruct him/her to calm down and relax, handcuff him/her and tell him/her to try and breathe normally.
- Move him/her to fresh air if possible. Most affected suspects will be decontaminated by being transported with the windows open on the transport vehicle.
- Most symptoms should disappear within 10-20 minutes. If not, obtain medical attention immediately.
- If subject requests medical attention the officer shall provide medical assistance **IMMEDIATELY**.

Placement on the Force Continuum

- Like OC Spray, the PepperBall Launcher is considered an “intermediate weapon”, as a separate tactic on the force continuum.

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- The PepperBall Launcher is to be used consistent with the Force Continuum as published by the New Hampshire Police Standards and Training Council as it relates to non-lethal force and OC.
- Pepper Ball is a force option that may be employed at any time as appropriate and as dictated by (a) threat levels, (b) relative capabilities of officer such as physical exhaustion, martial arts skills, multiple suspects, etc., or (c) special circumstances which may require you to escalate quickly to Pepper Ball skipping other steps on the force continuum.
- PepperBall should NEVER BE USED ON A PASSIVELY RESISTING SUBJECT. It shall only be used against ACTIVE AGGRESSIVE RESISTANCE or a credible threat of aggressive resistance coupled with an apparent present ability to carry it out. Deployment SHALL NOT CONTINUE ONCE THE SUBJECT HAS CEASED RESISTING OR THE CROWD HAS DISPERSED.

Use against an Officer

- If a suspect uses or threatens to use the PepperBall system against you, block against it by protecting your eye/face area, breathing properly, disengaging and employing weapon control techniques.
- Your response to being threatened or contaminated with PepperBall may include deadly force if you are unable to disengage and you reasonably believe you are about to be rendered completely vulnerable and in immediate danger of death or serious bodily injury.

Training

- No officer shall be issued or use the PepperBall Launcher until he/she has been trained in its use by a certified training officer or the Police Standards and Training Council or a similar course in this or another state.
- PepperBall recertification will occur annually.
- PepperBall instructors shall submit a Force Option Training Form for each officer trained within 1 business day of course completion.